

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW HAMPSHIRE**

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**In re: PAUL A. HARRIS,**

**Debtor**

**Chapter 7**

**Bankr. Case No. 05-12973-  
MWV**

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**In Re: GARDEN INNOVATIONS, LTD.,**

**Debtor**

**Chapter 7**

**Bankr. Case No. 06-10603-  
MWV**

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**Michael S. Askenaizer, Ch. 7 Trustee  
for the Bankr. Estate of Paul A. Harris  
-and-  
Steven M. Notinger, Ch. 7 Trustee  
for the Bankr. Estate of Garden Innovations, Ltd.,  
Movants**

**v.**

**Pioneer Capital Corporation,**

**Respondent**

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**MOTION TO AUTHORIZE SALE FREE AND CLEAR OF  
LIENS, CLAIMS, ENCUMBRANCES AND INTEREST**

*NOW COME* Michael S. Askenaizer, in his capacity as Trustee of Paul A. Harris and Steven M. Notinger, in his capacity as Trustee of Garden Innovations, Ltd., and move to authorize the sale free and clear of all liens, claims, encumbrances and interest of certain property consisting of business assets of Garden Innovations, Ltd. and in support thereof say as follows:

1. The Debtor Paul A. Harris filed a bankruptcy petition under Chapter 7 on or about

July 28, 2005. Michael S. Askenaizer was appointed Trustee of the estate of Mr. Harris.

2. Mr. Harris' schedules indicated that he owned personally all of the business assets formerly associated with Garden Systems, Ltd. The assets listed on the schedules included a certain "mold" located at Horizon Plastics, phone numbers, website and domain names, business email addresses, customer lists, trade names including Indoor Gardens trade name, Stand Up Garden and Flower Wall, and certain assembled or unassembled sets of arbors, stands or wooden components along with certain machinery and equipment, together with certain inventory.

3. Shortly after his bankruptcy petition and before the first meeting of creditors, Mr. Harris conveyed some or all of the foregoing property to Garden Innovations, Ltd., a New Hampshire corporation established by Mr. Harris after July 28, 2005.

4. On or about May 23, 2006, the Court held a hearing on Trustee Askenaizer's motion for turnover to require Mr. Harris to turn over all of the stock in Garden Innovations, Ltd. as proceeds of property of the bankruptcy estate. The turnover motion was granted.

5. On or about June 1, 2006, pursuant to an authorizing order of the United States Bankruptcy Court for the District of New Hampshire, Trustee Askenaizer filed a Chapter 7 bankruptcy petition on behalf of Garden Innovations, Ltd. Steven M. Notinger has been appointed Chapter 7 Trustee of Garden Innovations, Ltd.

6. On or about January 23, 2006, Garden Innovations, Ltd. granted to Pioneer Capital Corporation a security interest in all of its assets to secure the repayment of obligations owing by Limestone Real Estate, Inc. to Pioneer Capital Corporation. Limestone Real Estate, Inc. borrowed the sum of approximately \$665,000 from Pioneer Capital Corporation for the purpose of purchasing real estate at 58A South Road, No. Hampton, New Hampshire. The real

estate purchased was real estate occupied by Paul A. Harris as his residence.

7. Upon information and belief, Garden Innovations, Ltd. both guaranteed that obligation, and granted to Pioneer Capital Corporation a security interest in all of its assets including the assets which are the subject of this sale.

8. The conveyance by Mr. Harris of the business assets presently in the Garden Innovations, Ltd. bankruptcy estate to Garden Innovations, Ltd. immediately after his own bankruptcy petition and without court authority was either void or voidable. Because such a conveyance is either void or voidable, either Trustee Askenaizer or Trustee Notinger may convey the same. Because the conveyance is either void or voidable, the liens of Pioneer Capital Corporation are subject to a *bona fide* dispute.

9. Further, the liens of Pioneer Capital Corporation are subject to additional *bona fide* disputes even if title was good in Garden Innovations, Ltd. since Garden Innovations, Ltd. received no consideration in exchange for the granting of the said lien. Even if Garden Innovations, Ltd. received some consideration, consideration was not of a reasonably equivalent value.

10. The liens of Pioneer Capital Corporation are therefore subject to a *bona fide* dispute since if they exist, they are voidable pursuant to 11 U.S.C. §548.

11. Trustee Askenaizer and Trustee Notinger each seek to sell free and clear of all liens, claims encumbrances and interest all of the business assets of Garden Innovations, Ltd., whether those business assets are presently in the Harris estate or the Garden Innovations estate, to Joel Alvord pursuant to the agreements embodied in three letters attached hereto as *Exhibit A as modified as described herein*. The essence of the agreements are as follows:

- A. That Mr. Alvord will pay \$27,500 for the business assets;
- B. That the Trustees convey the assets free and clear of all liens, claims, encumbrances and interest, excepting only the claims of Horizon Plastics;
- C. That Mr. Alvord would take subject to the claims of Horizon Plastics but that the Horizon Plastics claims would be satisfied by an agreement to be entered into between Mr. Alvord or his assignee and Horizon Plastics to the effect that the outstanding obligations owing to Horizon Plastics by Harris or by Garden Innovations, Ltd. would be satisfied upon the purchase by Mr. Alvord or his assignee of the 224 vessels on site at a price of approximately \$163.00 per vessel.
- D. The foregoing agreement is slightly different from the attached correspondence in that Mr. Alvord's offer recited that "in the event that the trustee can deliver all items contained in the "inventory" provided to the Trustee by fax from Attorney Clark on May 30, 2006, Alvord will pay an additional \$2,500." The final Agreement contains no such condition.

12. The Trustees collectively believe that the foregoing resolution is in the best interest of each of their estates. The Trustees collectively believe that the best approach is first to liquidate the assets and get them sold and thereafter resolve as between the two estates an appropriate division of the proceeds. The Trustees collectively believe that the sooner a resolution can be achieved, the better.

13. The Trustees collectively believe that while this is not an offer which is huge, the business is at best marginal. To the extent that ongoing inquiries are not receiving responses, the

value of the business is deteriorating. On the other hand, this offer, together with the usual notice and opportunity for counteroffers, will lead, the Trustees hope, to an auction, counteroffer, other bids, and ultimately the best resolution for the two estates.

**WHEREFORE**, the Trustees respectfully requests this Honorable Court order and decree as follows:

- A. That they be authorized to accept the attached offer;
- B. That they be authorized to execute and deliver to Mr. Alvord a Bill of Sale in the form attached hereto as *Exhibit B*;
- C. That Mr. Harris or any entity controlled by him be ordered to turnover all assets subject to this sale forthwith to the successful bidder;
- D That all liens, claims, encumbrances and interest shall attach to the proceeds;  
and
- E For such other and further relief as is just and equitable.

Respectfully submitted,  
MICHAEL S. ASKENAIZER, TRUSTEE  
STEVEN M. NOTINGER, TRUSTEE

By their attorneys,  
FORD, WEAVER & MCDONALD, P.A.

Dated: August 23, 2006

By: /s/ Edmond J. Ford  
Edmond J. Ford ( BNH #01217)  
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**CERTIFICATION OF SERVICE**

I hereby certify that on August 23, 2006 a copy of the foregoing has been forwarded electronically and/or via U.S. First Class Mail, postage prepaid, to the following parties:

**Geraldine L. Karonis**  
Assistant U.S. Trustee  
66 Hanover Street, Suite 302  
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/s/ Edmond J. Ford  
Edmond J. Ford

